

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Paging Systems, Inc.'s	)	File No. 0003981232
Assignment of Authorization Application of	)	Call Signs: WPVE245-253, WPVE255-265,
Part 22 VHF/UHF Paging Radio Service	)	WPVE271-280, WPVE282-292, WPZG955-
Licenses to Crystal SMR, Inc.	)	967

To: Office of the Secretary  
Attn: Chief, Wireless Telecommunications Bureau

Petition for Reconsideration, or in the Alternative Section 1.41 Request  
(Second Version with minor changes, filed timely)

Environmental LLC ("ENL"), Skybridge Spectrum Foundation ("SSF"), Intelligent Transportation & Monitoring Wireless LLC ("ITL"), Verde Systems LLC ("VSL"), Telesaurus Holdings GB LLC ("THL") and Warren C. Havens ("Havens") (together, "Petitioners") hereby petition for reconsideration (the "Petition") the above-captioned assignment application (the "Application") to assign the above-captioned licenses (the "Licenses") of Paging Systems, Inc. ("PSI") to Crystal SMR, Inc. ("Crystal"). If the Petition for Reconsideration is not considered under Section 1.106, then Petitioners ask that it be considered under Section 1.41. This Petition, requests, in sum, that the consent to the Application be rescinded, that the Application be dismissed, the Licenses revoked, and PSI disqualified as a Commission licensee. For reasons given below, it is already clear that PSI is disqualified as a licensee and thus no hearing as to the rescission, dismissal, and revocation noted above should be needed, but at minimum reasons given in this Petition demonstrate the need for a formal hearing whether under Section 309 of the Communications Act or otherwise.

In addition, since the majority of the evidence contained herein is already in FCC public records under PSI license files that by any basic due diligence Crystal would have found, and it thus should be assumed it did find, the FCC properly investigate to what degree Crystal is conspiring with PSI to "launder" the PSI Licenses that are defective for reasons set forth herein.

Besides in the matter of this Application, as FCC records reflect, PSI has an existing relation with Crystall. That is further reason that it should be assumed that Crystal is aware of the defects in underlying the Licenses. Further, Petitioners have two pending court cases against PSI (one in the New Jersey US District Court and one now before the California Supreme Court that extends to Crystal as a “Do” defendant, to the degree Crystal is involved in wrongul actions by PSI in violation of FCC rules, the Communications Act, other Federal law and various State laws regarding torts and antitrust. Thus, after discovery in those cases, Petitioners may amend this Petition, or depending on its disposition at the time, submit a further appropriate filing before the Commission.

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## 1. Introduction and Summary

This section continues the introduction and summary on page 1. Petitioners show in the Petition that PSI does not have the character and fitness to hold the Licenses or to proceed with the Application and that its numerous rule violations require that the FCC revoke its immediate approval consent, dismiss the Application and proceed to hold a revocation hearing for the Licenses. The Petition provides clear evidence that PSI has misrepresented and lacked candor with the Commission in FCC licensing and has unlawfully maintained FCC licenses that had automatically terminated by not turning them back in for cancellation as it should have, that it has filed false renewal applications for stations that it reported and maintained as constructed and yet had never actually constructed and that it has for years failed to report CMRS operations to the Wireline Competition Bureau and pay all required Universal Service Fund and other associated fees for such operations and that these actions separately and jointly amount to anticompetitive actions and antitrust violations that require its disqualification as an FCC licensee.

In addition, PSI's controlling interest is fraudulently hidden. The consent and consummation should be rescinded, and the Application must be dismissed or denied and the Licenses cancelled, and at minimum a hearing must be held under 47 USC §309(d) and (e) if PSI disputes the facts and issues demonstrated herein (Under immediate approval procedures this Petition, per Sections 1.948 and 1.106, is the first opportunity that Petitioners have to petition the Application).

The Petition contains *prima facie* evidence that shows that consent to the Application was not in the public interest including because PSI lacks the character and fitness to be a Commission licensee because it has and continues to violate Commission rules and because of its past and ongoing rule violations, lack of candor, and misrepresentations, token construction, license warehousing, etc.

## 2. Standing and Interest

Petitioners have standing and interest to file the instant Petition. They will be adversely harmed by grant of the Application including because they are direct competitors with PSI around the country in the AMTS radio service and their other license holdings can offer competitive services to those of the Licenses. THL and SSF both hold LMS licenses, VSL, ITL, ENL and SSF hold AMTS licenses, ITL holds MAS licenses and Havens,<sup>1</sup> VSL and SSF hold 220-222 MHz licenses.<sup>2</sup> Grant of the Application will provide benefits to PSI that will enable it to continue to perpetuate its anticompetitive and antitrust actions noted herein and to aid covering up its warehousing of spectrum and other rule violations. A licensee who, as shown herein, has committed numerous, grave FCC rule violations knowingly cannot and should not benefit from any FCC license, but should be disqualified and its licenses revoked per the Commission's own *Character Policy Statement* and rules. In addition, it is in the public interest for the Bureau to consider the evidence herein that shows PSI has and continues to violate FCC rules and that it does not have the character and fitness to be a Commission licensee. The facts herein show that PSI has lacked candor and misrepresented and therefore its representations cannot be relied upon by the Commission and a hearing must be held. Although the facts herein may relate to PSI FCC licenses in other radios services than that of the Licenses, the rule violations, false certifications, misrepresentations, and anticompetitive actions of an FCC

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<sup>1</sup> Havens has standing individually to file this Petition because he was a competitor nationwide to PSI prior to the AMTS auctions in seeking via applications site-based AMTS spectrum. Havens was impermissibly blocked from applying for AMTS around the country, as shown by Petitioners' evidence, that was automatically terminated for failure to timely construct, and even if deemed to have been timely constructed, then for failure to meet the coverage and continuity of service requirements and for other numerous defects some of which are noted herein. Thus, Havens was damaged by PSI's anticompetitive actions and has interest and standing in seeing that PSI does not benefit from the Application since it does not have the character and fitness to be a Commission licensee.

<sup>2</sup> THL holds Call Signs WPOJ924, WQGN602, and WQGN603; SSF holds Call Signs WQHU596 and WQHU672 and WQHZ582-583, WQHZ690-696, and WQJW656; Havens holds Call Signs WPOJ291-292, WPOJ293-297, WPOI517-518; VSL holds Call Sign WQCP816; ENL holds Call Sign WQIM654; ITL holds Call Signs WQER521-530.

licensee cannot be limited to and restrained to only that radio service, but are before the entire Commission and relevant to the licensee's qualification to be a Commission licensee in any radio service. Otherwise, licensees could perpetuate fraud and anticompetitive actions in one radio service without any fear of reprisal or action in other radio services in which it operates as a licensee. In this case, it is PSI, as a licensee, that the facts show no longer qualifies to be a Commission licensee. Therefore, it is paramount that the relevant facts and arguments contained herein be fully considered with respect to the Application and Licenses and PSI as a licensee.

As AMTS licensees in much of the U.S., VSL, ITL, ENL and SSF are direct competitors with PSI throughout their licensed areas where PSI holds incumbent AMTS stations. Thus, any benefit from the Application affects the competition between them and PSI. They also have an interest in seeing the Commission's Rules upheld and applied and to see anticompetitive actions and rule violations including misrepresentation, lack of candor, and fraud punished.

PSI has also argued that license holdings are sufficient cause for standing.<sup>3</sup> PSI has argued this even where there is no overlap of license area between competitors, and when it has argued the contrary against Petitioners in several pending proceedings. However, it appears now that PSI agrees with Petitioners' arguments in those other pending AMTS proceedings in which Petitioners argued as part of standing, among other reasons Petitioners gave for standing, that PSI is a competitor of Petitioners in areas around the country and thus any benefit that PSI gets from any of its licenses, in any area, may adversely affect Petitioners because it will help PSI in competition (as Petitioners presented: anticompetitive actions by PSI in those other, pending AMTS proceedings). (This standing argument is based on competition by entities, not tied solely to competition by them in a particular area, and that argument is based on Article III standing in US courts and US competition/ antitrust law. See below). Thus, PSI has effectively abandoned

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<sup>3</sup> See e.g. PSI's *Petition to Dismiss or Deny* filed 7/31/09 re: File Nos. 0003875412, -418, and -427, and PSI's *Petition to Deny* and subsequent appeals of File No. 0002147762, an assignment of authorization application between ENL and Northeast Utilities Service Company.

its previous arguments against Petitioners in those other AMTS proceedings and now agrees with Petitioners that Petitioners do have standing to file and proceed in those proceedings and this one for (at least) the same reasons that PSI made in its petition of File No. 0003875412 et al.

Petitioners also have standing based on the criteria applied in US courts under Article II of the Constitution, *see Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992) (“*Lujan*”),<sup>4</sup> not an artificially narrow standard that PSI has suggested in other proceedings the FCC should apply (even if some FCC decisions may be interpreted to provide for such a narrow standard). Article III standing is obtained among other ways, where—as in the instant petition for reconsideration proceeding (Section 1.106(f) allows for petitions of applications approved under immediate approval procedures) deals with petitions of —unfair competition antitrust law violation claims are asserted (and until disproven or dismissed), even where the existence of an matter or action that offends or arguably offends said law is the sole basis for standing, and where the challenger asserting standing is among the parties entitled to protection under said law (where, without said protection, injury in fact to the party asserting standing, and to the markets involved, is assumed, as it is under said antitrust law).<sup>5</sup> It is also clear that, to the degree (as the Petition asserts herein) that PSI and the Application do not comply with the rules, that Petitioners suffer competitive harm, and also that subject wireless markets are harmed.<sup>6</sup> noncompliance with rules that are the basis of fair competition is obviously particularly harmful.

In addition, even if the FCC finds that Petitioners lack standing, this Petition should be processed under Section 1.41, including for consideration of the fact and arguments herein for a

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<sup>4</sup> Federal administrative proceeding standing criteria, as summarized in the APA, is derived from Article III standing. Regarding *Lujan*, a well known case on Article III standing, Justice Scalia, who wrote for the majority in *Lujan*, later asserted that even a plane ticket to the affected geographic areas would have been enough to satisfy the future injury requirement. *City of Los Angeles v. Lyons*, 461 U.S. 95 (1982).

<sup>5</sup> See, e.g., *Ross v. Bank of Am., N.A.*, No. 06-4755, 2008 WL 1836640 (2d Cir. Apr. 25, 2008).

<sup>6</sup> Skybridge as a nonprofit Foundation legally must and does solely serve public-interests and no private interests. It has standing on that basis also: to pursue protection for the wireless markets involved.

more full and complete record and determination in the public interest, especially since they deal with the fundamental character and fitness of a licensee. It will also be more efficient for FCC processes and the parties involved to address the facts and arguments raised herein now rather than have to later rescind any grant of the Application due to decision in favor of Petitioners' in other pending proceedings involving PSI and the same issues.

Further, the Petition should be considered for a more accurate and complete record in the public interest. It is in the public interest to consider the facts and arguments herein because they show that PSI has violated FCC rules for failure to turn back-in automatically terminated stations, filing false renewal applications for stations that were never constructed, failing to report CMRS operations and pay required USF and other FCC regulatory fees for over 10 years, failure to follow Section 80.385(b) and provide actual station details to Petitioners, and for engaging in anticompetitive and antitrust actions that have damaged Petitioners, FCC licensing and the public interest (antitrust actions are inherently against the public interest).

The Petition should also be considered because it is only through the investigative efforts of Petitioners that the FCC has been made aware of the numerous rule violations and anticompetitive actions committed by PSI (even though it is PSI that has a duty to be truthful—see e.g. Sections 1.17 and 1.65) including but not limited to: (1) that PSI never constructed many of its AMTS stations it reported as constructed (it was Petitioners that pushed for an AMTS audit and those FCC AMTS “audits” showed that PSI had not built several stations); (2) that PSI filed false construction notices and renewal applications for those non-constructed AMTS stations; (3) that PSI has deliberately misinformed the FCC on its Forms 499-A and failed to pay required fees; (4) that PSI misrepresented its coverage and continuity of service for its AMTS stations when in fact its AMTS licenses never met the requirements of Section 80.475(a) and thus automatically terminated without specific Commission action under Sections 1.946, 1.955, 80.49, 80.475(a) and Condition 46 on those licenses; and (5) that PSI has, contrary to FCC rules,

maintained its AMTS incumbent licenses that auto-terminated and failed to turn them back in for cancellation as required by Sections 1.946 and 1.955.

### 3. Reference and Incorporation

Petitioners reference and incorporate here for efficiency, rather than reiterate them again since they are already before the FCC and deal with some of the same matters raised herein, the ENL, SSF and Havens facts and arguments in their filings in the following proceeding (the lead filing is listed here):

Petition for Reconsideration of Skybridge Spectrum Foundation et al. filed April 20, 2009 regarding *Order*, DA 09-643, released March 20, 2009 and Call Sign WQA216. Erratum Copy filed 4/29/09. (the “NY Order Proceeding”)

Petitioners filings in NY Order Proceeding are relevant to the instant proceeding because they provide information, some of it restated herein to a certain extent, that shows that PSI has maintained contrary to FCC rules automatically terminated FCC licenses, that PSI does not have the character and fitness to be a Commission licensee and that PSI has failed to file Forms 499-A listing all of its operations around the country. In addition, it is administratively efficient for the Bureau to consider the NY Order Proceeding and the instant one together since they both deal with facts and arguments regarding PSI’s lack of character and fitness and past and ongoing rule violation and thus any decision in one of the proceedings may affect the other.

### 4. Failure to Turn Back in Automatically Terminated FCC Licenses for Cancellation and PSI Violation of FCC Rules to Provide Station Details

Petitioners show here that PSI has for over 13 years failed to turn back in for cancellation automatically terminated AMTS licenses. This evidence is relevant to the instant proceeding because it shows ongoing and deliberate violation of FCC rules and illegal operation without a license and anticompetitive and antitrust actions by PSI. Also, since auto-termination of a license is effective without specific Commission action, then these are facts that require no Commission determination and thus are ripe for presentation to the Commission as clear



evidence of fraud, misrepresentation and lack of candor by PSI. These facts are more than sufficient for the Commission to find that PSI lacks the character and fitness to be a Commission licensee and to immediately proceed to a revocation hearing for the Licenses and PSI's other FCC licenses (the PSI auto-terminated AMTS licenses do not need a hearing since they have already terminated without specific Commission action and only need to be reflected as such in ULS).

PSI's AMTS licenses automatically terminated at their original construction deadlines for failure to meet the AMTS coverage and continuity of service requirements in Section 80.475(a), which is still in effect per the Commission (even if the rule had been changed, it would not matter with respect to the PSI AMTS licenses since the rule was allegedly changed after the their construction deadlines and thus they had already terminated without specific Commission action. An auto-terminated license cannot be retroactively reinstated or revived). The Bureau has recently reiterated in a letter declaratory ruling that the coverage and continuity of service requirements of Section 80.475(a) were in effect when AMTS incumbent stations were built. (the "MCLM Ruling")<sup>7</sup> Even making generous assumptions for certain technical parameters and using those that are in ULS (although actual station operating parameters are required—see Section 80.385(b) and the MCLM Ruling), PSI's AMTS licenses never had overlapping

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<sup>7</sup> Letter of April 8, 2009 from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Dennis Brown, counsel for Maritime Communications/Land Mobile LLC, DA 09-793, 24 *FCC Rcd* 4135, at footnote 7 that states [underlining added for emphasis]:

It is our understanding that MC/LM is concerned that, unless Section 80.385(b) is interpreted as requested, there exists the potential for a geographic AMTS licensee to interpose a station between two of the incumbent's stations. The Commission has concluded, however, that such a scenario will not occur if the incumbent licensee constructed its system in compliance with the then-existing requirement to maintain continuity of service, see 47 C.F.R. § 80.475(a) (1999). See Amendment of the Commission's Rules Concerning Maritime Communications, *Third Memorandum Opinion and Order*, PR Docket No. 92-257, 18 *FCC Rcd* 24391, 22401 ¶¶ 23-24 (2003).

(the "MCLM Ruling")

coverage with other stations or to cover the defined waterway. Petitioners show at Exhibit 1,<sup>8</sup> which contains engineering showings done for Petitioners by Peter Moncure, head of RadioSoft, that even when assuming technical parameters per ULS and other over-generous, assumed technical parameters (and those parameters assumed by the FCC for the WTC station) that PSI's AMTS licenses never met by their construction deadline, the coverage and continuity of service requirements specified in Section 80.475(a), fully in effect and applicable at the time for their AMTS licenses.<sup>9/10</sup> Petitioners point out here that the Bureau never conducted any engineering to determine if PSI had met the coverage and continuity of service requirements of Section 80.475(a),<sup>11</sup> but instead must have relied on the representations of PSI (even though PSI has never provided any actual station operating details to the FCC or to Petitioners as required under

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<sup>8</sup> Petitioners have provided maps depicting the PSI AMTS stations' contours using both 50W TPO and 25W TPO since PSI in its original station applications proposed to build using Neutec Communications 25 W transmitters. Thus, the 25W TPO maps depict more accurately the service contours that PSI would have had at the construction deadlines.

<sup>9</sup> Numerous FCC Orders are clear that Section 80.475(a) required continuity of service and overlapping coverage and could not be licensed for single-site stations since AMTS was not a VHF Public Coast service and vessels needed to be able to travel seamlessly along a navigable waterway without any gap in coverage. This is what made AMTS different than the VPC service. See for example: (1) *First Report and Order*, FCC 91-18, Gen Docket No. 88-372, RM-5712, released January 25, 1991, 68 RR 2d 1046, 6 FCC Rcd 437, 1991 FCC LEXIS 368 (the "Nationwide Order"); (2) *Order on Reconsideration*, DA 99-211, Released January 21, 1999, 14 FCC Rcd 1050, regarding Fred Daniel d/b/a Orion Telecom (Orion) applications seeking AMTS spectrum at various inland locations; and (3) *Memorandum Opinion and Order*, DA 98-1368, released July 9, 1998, 13 FCC Rcd 17474 (the "Great Lakes Order"). Also, Petitioners note here that when Havens applied for an AMTS license to cover the South Platte River that the FCC would not grant his applications until he showed that there was no gap in coverage along 60% of that waterway.

<sup>10</sup> The blue station service contours on the maps are for the stations that were originally applied for and licensed and allegedly constructed for the Pacific Coast, Atlantic Coast and Great Lakes. The red service contours are for the stations that were applied for and licensed and allegedly constructed after the construction deadline of the stations with the blue service contours. Thus, the red service contour stations automatically terminated without specific Commission action since there were no previous licenses since they had automatically terminated for failure to meet the requirements of Section 80.475(a) and even if viewed by themselves automatically terminated because they were single-site stations that did not meet the requirements of Section 80.475(a).

<sup>11</sup> See *Letter* from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Intelligent Transportation and Warren Havens dated April 3, 2007, regarding FOIA Control No. 2007-177.

AMTS rules, including Section 80.385(b) and as reaffirmed by the MCLM Ruling).<sup>12</sup> As noted above, the Bureau has recently reaffirmed in the MCLM Ruling that AMTS incumbents had a duty to meet the “then-existing” coverage and continuity of service requirements (Petitioners maintain that those requirements of Section 80.475(a) are still in effect because they were never properly removed per the Administrative Procedures Act (“APA”). Petitioners have that on appeal).<sup>13</sup> It was PSI that had a duty to be truthful to the FCC if it was not meeting the requirements of Section 80.475(a) at the construction deadline. Petitioners are showing here that PSI did not meet those requirements, that PSI lacked candor and misrepresented to the Bureau that it had met those requirements when it requested increased protection from geographic licensees in the AMTS rulemaking (alleging that it needed such protection to maintain its continuity of service, which as shown here it never had), when it filed its renewal applications for its AMTS licenses and when it did not promptly return those licenses for cancellation. These were all repeated instances of misrepresentation to the Commission. Therefore, PSI has unlawfully maintained the automatically-terminated-without-specific-Commission-action AMTS licenses (some since 1995), thereby violating multiple FCC rules including but not limited to Sections 1.17, 1.65, 1.946, 1.955, 80.49 and 80.475(a) and damaging Petitioners who hold the geographic AMTS spectrum overlaying PSI’s incumbent stations to whom the spectrum subject of its site-based AMTS licenses lawfully belongs under FCC rules and law. PSI is also damaging those of Petitioners that can compete with PSI (the A-block geographic), and/or participated in the auction for the Great Lakes geographic license (which PSI falsely encumbered in order to block out competition). Besides blocking Petitioners from using the spectrum subject

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<sup>12</sup> Petitioners note here that PSI proposed in its originally filed AMTS station applications a 38 dBu service contour to meet the coverage and continuity of service requirements of AMTS.

<sup>13</sup> See *Letter* from Thomas Derenge, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to Skybridge Spectrum Foundation and Warren Havens dated April 3, 2007, regarding FOIA Control No. 2007-178. Per that response, the FCC could provide no evidence that the deletion of the coverage and continuity of service requirements of Section 80.475(a) was done properly under the APA. Petitioners are appealing that.

of its AMTS licenses, PSI has also used its AMTS licenses to impede and harm Petitioners use of the surrounding spectrum (see e.g. PSI's petitions against ENL's assignment to Northeast Utilities Service Company). This prolonged lack of candor and misrepresentation and deliberate violation of FCC rules for failure to turn back in automatically terminated licenses for cancellation shows that PSI does not have the character and fitness to be a Commission licensee under the Commission's own *Character Policy Statement* and that PSI should have the Licenses and its other FCC licenses revoked and other appropriate sanctions taken (no revocation is needed for the PSI AMTS licenses as noted above because they already automatically terminated without specific Commission action).

As evidenced by Exhibit 3, PSI proposed and applied for the entire Atlantic Coast (It did likewise for the Pacific Coast, and for the Great Lakes it proposed service to its applicant-defined substantial navigational waterways), but as shown in Exhibit 1 failed to ever provide the required coverage and continuity of service for it or its AMTS Pacific Coast and Great Lakes licenses. In fact, PSI never came even close to meeting those requirements. It was PSI that proposed the entire Atlantic Coast as its license area, it could have proposed a smaller region, but did not. The PSI July 30, 1993 Letter at Exhibit 3 (from PSI legal counsel, Audrey Rasmussen) clearly states to the FCC:

Paging Systems, Inc. is proposing ten sites from Portland, Maine through Miami and Tampa, Florida...The proposed ten transmitter sites will form the "backbone" of the applicant's systems. Additional transmitter and receiver locations will be added when the systems becomes operational. Paging Systems, Inc. proposes to serve the entire East Coast.

PSI could have added more sites in time to meet the coverage and continuity of service requirements but chose not to. Instead, PSI deliberately tried to hide the fact that it had not met the coverage and continuity of service requirements for its AMTS licenses by adding additional stations (see the stations with the red service contours on the maps in Exhibit 1) well after the automatic termination as of the construction deadline of its originally granted stations for each of

its defined AMTS navigable waterways (Pacific, Atlantic and Great Lakes areas). PSI should be sanctioned for these attempts at concealing its failure to meet Section 80.475(a)'s requirements. Instead of turning back in its AMTS licenses for cancellation, per Sections 1.946, 1.955 and 80.49 and Condition 46, PSI unlawfully maintained them and misrepresented to the FCC that it had met all requirements of Section 80.475(a). Thus, failure to provide coverage and continuity of service under Section 80.475(a) in effect at the time resulted in automatic termination without specific Commission action of its Atlantic Coast and other AMTS licenses.

Thus, per the FCC rules and FCC Orders, the PSI AMTS licenses were impermissible single-site stations without the required overlapping coverage with another station and thus automatically terminated without specific Commission action pursuant to Sections 1.946, 1.955, 80.49, 80.475(a) and Condition 46. The only two stations that appear to possibly have had overlapping coverage over water were the two in the Los Angeles area (see Pacific Coast map, two stations with blue contours for KEB295 and WHX782) although they still auto-terminated since PSI did not meet the coverage and continuity of service for its defined area, the Pacific Coast (and in any case, it should not be entitled to keep any area even if there was a minor overlap due to the repeated, willful representations for the majority of its AMTS stations as evidenced by the facts shown herein). However, once the actual station operating parameters are provided, then it may be shown that the KEB295 and WHX782 also did not have overlapping coverage over water (in any case, the numerous PSI violations shown herein merit termination of these two stations even if they are found to have been timely constructed and with actual operating parameters to have had overlapping coverage over water). This is an incurable defect of the PSI AMTS licenses and they cannot be revived now after their automatic termination and there is no remaining action to be taken by the FCC for this auto-termination to have been effective. Thus, the Bureau must update the ULS to reflect the auto-termination of the PSI AMTS incumbent licenses. PSI had years to add additional stations to provided multi-site,

contiguous coverage as required by the Commission's Rules, but failed to do so. Thus, PSI has illegally operated auto-terminated AMTS stations since their construction deadline and failed to turn them back.

Furthermore, it is entirely clear in FCC records that, to this date, PSI never reported any of its AMTS stations as constructed. All PSI did is file "activation" notices with Kim Kleppinger at the FCC (who per PSI filings by Audrey Rasumussen appears to have been in a familiar first-name relation) letter stating no more than an intention to commence testing in the future. No actual construction, service, or operation was ever reported. AMTS construction required, at the construction deadlines for all PSI stations, at multi-site continuity of coverage, and PSI never had any—one obvious reason that it never reported any construction. The PSI checking of "yes" boxes in the FCC 2004 AMTS station "audit" was ~~nothing~~ more than a vague statement that something was constructed—but the only thing PSI actually described ~~was~~ a possible testing to commence service, and that is not AMTS station construction under the minimum rule requirements. This fact—lack of any reports of construction—which is a rule requirement for stations actually constructed, demonstrates further that all of the PSI stations licenses auto terminated at their construction deadlines.

In addition, Petitioners have requested actual station parameters for the PSI AMTS stations since 2005. PSI has never responded or provided any details for its AMTS stations around the country. The MCLM Ruling states at page 1, paragraph 3: "AMTS geographic licensee's obligation to provide co-channel interference protection to an incumbent site-based station to be based on the site-based station's actual operating parameters." And at Footnote 9 it goes on to state [underlining added]:

*See* Northeast Utilities Service Company, *Order*, DA 09-643, ¶¶ 11-12 (WTB MD rel. Mar. 20, 2009). As we noted in that decision, we expect incumbent AMTS licensees "to cooperate with geographic licensees in order to avoid and resolve interference issues. This includes, at a minimum, providing upon request sufficient information to enable geographic licensees to calculate the site-based

station's protected contour.” *Id.* at n.12 (citing *Fifth Report and Order*, 17 FCC Rcd at 6704 ¶ 39)....

Section 80.385 and the MCLM Ruling are effective Commission orders and PSI did not petition for reconsideration the MCLM Ruling, so it does not oppose its conclusions on the meanings of the Commission's Rules. Therefore, PSI is in violation of them for failure to provide the information that Petitioners have requested from it several times since 2005 to determine its actual ERP for its stations based on their actual operating parameters as constructed at the construction deadline. Petitioners are pursuing that information via their Court Case<sup>14</sup> against PSI and once they get that information will provide it to the FCC and conduct the studies to see PSI's actual coverage for its AMTS stations; however, they note this ongoing PSI violation of Section 80.385(b) to further show that PSI does not have the character and fitness to be a Commission licensee.

As noted above, certain aspects of this Petition are also, under court jurisdiction independent of FCC jurisdiction, pending in a case filed by Petitioners against PSI in a U.S. District Court in New Jersey. That includes jurisdiction regarding findings sought by Petitioners that PSI has violated certain Commission orders, including rules that are “orders” as the court has interpreted that word to mean in Section 47 USC Section 401(b). Petitioners' position is that because the Commission's Rule on continuity of coverage, Section 80.475(a) (prior to its alleged revision) and in orders interpreting that rule, are entirely clear, and further that the engineering required under the applicable service-contour rule (Section 80.385(b)) is also entirely clear,<sup>15</sup> that Petitioners can demonstrate to the court that automatic termination has occurred under those clear facts and law, and properly seek a court order injunction under 47 USC 401(b) to require PSI to surrender the terminated station authorizations to the Commission for cancellation.

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<sup>14</sup> See *Skybridge Spectrum Foundation, et al. v. Mobex Network Services LLC, et al.*, Case No: 08-CV-03094-KSH-PS, in the US District Court for the District of New Jersey.

<sup>15</sup> Also, Petitioners point out again that PSI proposed a 38 dBu service contour in its originally filed AMTS station applications.

However, in addition to properly seeking such an injunctive order from that court, it is also proper for Petitioners to submit evidence in this proceeding to the FCC based on FCC jurisdiction, and because PSI has had for years an obligation to admit to the automatic termination and surrender the stations, and because not doing so constitutes illegal operation of a station without a license, and further because such activities of PSI are unlawfully warehousing spectrum and blocking Petitioners from using the spectrum for its intended purposes including intelligent transportation systems. If the Commission chooses to allow the court to address those factual matters of automatic termination and issue an appropriate injunction prior to the FCC acting on these matters under its separate jurisdiction, Petitioners do not object. In fact, Petitioners believe that these matters are essentially ones of deliberate fraud and it is the U.S. courts far more than the Commission which is experienced in and fully equipped for dealing with hearings and making determinations involving fraud of this sort. The Commission on the other hand expects licensees to always act with full candor and disclosure and in compliance with all the Commission's Rules.

It is well-known that the Commission is not equipped to conduct hearings and deal with issues of substantial fraud, and seldom holds hearings on such matters (or any contested matters). It is already clear that PSI has engaged in substantial fraud in AMTS licensing matters, even if one looks simply at the 2004 AMTS "audits" (e.g. false notices of construction and false renewal applications for stations never constructed). For the above reasons, it appears appropriate for the Commission to allow the parties to contest this matter in the noted U.S. District Court proceeding prior to the Commission spending further resources on such matters.

5. PSI Admission of Misrepresentation and Lack of Candor on Form 499-A and Form 499-Q, Failure to Disclose CMRS Operations Subject to Universal Service Fund Fees



PSI has recently admitted that for over 10 years it has failed to fully disclose all of its AMTS CMRS operations around the country as required by the Form 499-A and Form 499-Q.<sup>16</sup> This was deliberate misrepresentation and fraud and means that PSI submitted false certifications on its Forms 499-A and that it is in violation of the FCC rules and more importantly that it has failed to report and pay all necessary regulatory and other fees for its AMTS licenses including for the Universal Service Fund.<sup>17</sup> This is a grave admission and the FCC should proceed immediately to hold an investigative hearing. It is only due to Petitioners pointing this out in a proceeding before the FCC that finally PSI had to admit to these ongoing rule violations. There is no way that PSI could not have known that it was required to report all of its AMTS stations and operations on its Forms 499-A and 499-Q since the forms' instructions are clear and PSI is represented by FCC legal counsel. PSI has allegedly been operating AMTS stations in states other than California, despite their automatic termination as noted herein, since 1995. Yet, only now does it admit that its filed Forms 499-A and 499-Q were defective and that it has not been reporting its AMTS operations outside of California for the entire time they have existed and paying the required Universal Service Fund and other FCC fees.

PSI has alleged to be operating its AMTS stations outside of California, apart from any other non-AMTS FCC licenses it may hold outside of California, for over 14 years. In the AMTS rulemaking prior to the auctions, PSI argued and obtained from the FCC increased protection for its AMTS operations because it asserted that it needed to maintain its continuity of

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<sup>16</sup> See *Opposition to Petition to Deny* of Paging Systems, Inc. filed July 2, 2009 re: File No. 0003838689 at page 5, section C. PSI states it has updated its Forms 499 to reflect its operations and says at footnote 16, "the previous filings erred with respect to operating locations".

<sup>17</sup> Petitioners note here that they have a pending FOIA request (FCC FOIA Control No. 2009-136) to obtain all the PSI Form 499-A records. PSI has opposed this request. This new admission by PSI is further reason why PSI's Forms 499-A must be fully released to Petitioners since for years PSI has misrepresented and given false certifications on its Forms 499-A and failed to report and pay USF fees for its AMTS operations outside of California. Thus, it is in the public interest for the PSI Forms 499-A for all years to be released so that the extent of its misrepresentations can be ascertained and the damages for failure to file USF fees determined.

service, which as shown herein it never had and thus those stations automatically terminated without specific Commission action and should have been turned back in for cancellation. In addition, PSI has asserted before the FCC, in its original stations applications and subsequently, that it has been providing CMRS AMTS service to the maritime public since its stations were constructed. In its original AMTS station applications, PSI told the FCC that it expected to put 600 mobile units into service and that it needed all of the AMTS spectrum (an AMTS applicant could request less than the full 1 MHz). PSI had AMTS stations (although they actually auto-terminated) in most of the major metropolitan markets of the U.S. To maintain its AMTS stations around the country, if construction was not token and solely for purposes of warehousing, PSI would have had to have been paying thousands of dollars per site per month for site leases, maintenance, etc. It would also have spent over a hundred thousand per station to construct a system to provide service to 600 or more mobile users. Thus, given that PSI has alleged to have been operating its CMRS AMTS stations for over 14 years to the maritime and land mobile public, it must be assumed that PSI has had substantial monthly gross revenues from its CMRS AMTS operations outside of California (no company, unless it was for the purpose of warehousing spectrum by having no or only token construction at a site (e.g. a test radio—as Petitioners found PSI had at its Haleakala site in Hawaii—see proceeding under WHG545), would continue to operate over 30 AMTS stations over 14 years at a loss). These are substantial revenues that PSI has not been reporting to the FCC on the Forms 499 or any other required filing. It has thus avoided not only FCC taxes and fees, but U.S. Federal and State taxes and fees (Petitioners have shown before the FCC that PSI has not been registered to do business in any states outside of California). This is illegal and anticompetitive behavior and antitrust action and shows PSI does not have the character and fitness to be a Commission licensee. In addition, in the Forms 499 that PSI did file that listed California as the sole jurisdiction in which it was providing telecommunications services, it still claimed *de minimus* status for Universal Service

Fund contributions despite claiming to have built and be operating numerous FCC CMRS licenses throughout California for several years. This is impossible. PSI had to have been making from its numerous California FCC licensed station operations, including the Licenses, enough revenues to have to contribute to the Universal Service Fund and report them on the Form 499-A. The fact that PSI did not can only mean that it has token operations for purposes of warehousing spectrum.

PSI's deliberate failure to file Forms 499<sup>18</sup> or its equivalent and to report all of the jurisdictions in which it operates and the gross revenues from those operations are sufficient grounds for the FCC to grant the Petition since these actions show that PSI has submitted fraudulent, sham Form 499 and equivalent filings and thus committed misrepresentations and lack of candor for the years it did not file. As the FCC's 8/24/09 Letter response re: FOIA Control No. 2009-136 showed (the "Letter"), PSI has actually not filed Forms 499 or its equivalent for nine years from 1994-2002, and for 2005 and 2007 and not signed it for 2006 (an unsigned Form 499 since it is not certified as truthful and accurate cannot be taken as correct and accurate) (11 years total). Such ongoing, repeated failure by PSI can only be seen as a deliberate action to avoid reporting operations, gross revenues from those operations and associated fees, taxes, etc. Until 2009 PSI listed California as the sole jurisdiction where it provides telecommunications services; however, after SSF and its affiliates pointed this out to the FCC on several occasions, PSI has amended its current year online Form 499 to list over 50 other jurisdictions.<sup>19</sup> Those past erroneous filings have not been corrected by PSI (and cannot be

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<sup>18</sup> Given the number of years for which PSI has not filed a Form 499 or reported all of its jurisdictions and the gross revenues from those jurisdictions, such actions can only be viewed as deliberate and not inadvertent or a mistake, especially since PSI has been represented by FCC legal counsel who is fully knowledgeable in the requirements of the Form 499 and its equivalent.

<sup>19</sup> These include: Alabama, Alaska, American Samoa, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Johnston Atoll, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Midway Atoll, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New

corrected by merely correcting the most current Form 499 on file) and PSI has not informed the Wireline Competition Bureau of them even though FCC rules require it including Sections 1.17 and 1.65.<sup>20</sup> Therefore, PSI did not file a Form 499 or its equivalent for at least 11 years and when it did file one for years 2003, 2004, 2006, 2008 and initially 2009, it failed to list up to 59 jurisdictions in which it operates and report the gross revenues from those operations! PSI is and has been represented by FCC legal counsel. Thus, there is no good explanation for these failures, except that PSI was intentionally avoiding reporting its operations and the gross revenues from those operations to avoid paying regulatory and other fees imposed by the federal and state governments when such disclosures are properly made. This shows that PSI has committed years long misrepresentations and fraud with respect to filing its Forms 499 and disclosing reportable gross revenues from operations,<sup>21</sup> which means its submitted Forms 499 are sham, fraudulent filings and that PSI's representations and word cannot be relied upon by the FCC. In light of the facts regarding PSI's Forms 499-A and its failure to turn back in its auto-terminated AMTS, any PSI assertions of construction and operation of the Licenses must be investigated to determine if the Licenses were actually constructed and whether grant of the Application is in the public interest.<sup>22</sup>

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Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, U.S. Virgin Islands, Vermont, Virginia, Wake Island, Washington, West Virginia, Wisconsin, and Wyoming.

<sup>20</sup> Exhibit 2 hereto provides the PSI Form 499-A filings with the FCC since 2004. PSI filed and certified the Forms 499-A as truthful. PSI cannot maintain two different positions before the FCC, one where it tells the Universal Service Administrator Company and the Wireline Competition Bureau that it is not operating outside of California, and another where it alleges to the Bureau that it is operating stations along the Pacific and Atlantic coasts and the Great Lakes.

<sup>21</sup> Or it means that PSI is operating at most token stations for purposes of warehousing.

<sup>22</sup> This was anticompetitive and antitrust action by PSI. Petitioners are pursuing damages from PSI for such antitrust actions in the above-noted court case in New Jersey. The court is the appropriate forum for such matters since the FCC does not deal with antitrust matters; however, the FCC can still consider PSI's failures to report operations and pay fees and take appropriate action, which in this case, given the period of the violations and the other rule violations noted

The Form 499-A is relevant to the instant proceeding because they are clear evidence from PSI of misrepresentation of the construction and operation of FCC licenses, which goes to its lack of character and fitness..

6. Further Ongoing Rule Violation—Failure to Follow Section 80.385(b)

As noted above, PSI has an obligation to provide to Petitioners per the MCLM Ruling the actual operating parameters its AMTS stations, but has failed to do so after repeated requests by Petitioners. Thus, PSI is violating the requirements of Section 80.385(b). It is not in the public interest to process or grant the Application to a licensee who fails to follow Commission Rules.

7. Hearing Required Under 47 USC Section 309(d)-(e)

The current 47 CFR §§ 309(d) and (e) (herein, “309(d)-(e)”), with the US Supreme Court Ashbacker decision (citing an earlier version of §309), require a formal hearing in this matter since Petitioners provide *prima facie* evidence that shows that grant of the Application is not in the public interest. Petitioners’ facts and arguments in the NY Order Proceeding as to why a hearing must be held are applicable here (see e.g. Section 4 of the Erratum Copy of Petitioners’ Petition for Reconsideration filed in that NY Order Proceeding), as well as the facts and arguments herein that require a hearing.

The Supreme Court held in ASHBACKER RADIO CORP. v. FEDERAL COMMUNICATIONS COM'N, 326 U.S. 327 (“Ashbacker”) (footnotes in original deleted and emphases and items in brackets “[ ]” added):

The public, not some private interest, convenience, or necessity governs the issuance of licenses under the Act. But we are not concerned here with the merits. This involves only a matter of procedure. [1] Congress has granted applicants a right to a hearing on their applications for station licenses. Whether that is wise policy or whether the procedure adopted by the Commission in this case is preferable is not for us to decide. [2] We only hold that where two bona fide applications are mutually exclusive the grant of one without a hearing to both deprives the loser of the opportunity which Congress chose to give him.

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herein by PSI, must be revocation of PSI’s FCC licenses including the Licenses and dismissal of the Application.

In *Federal Communications Commission v. Sanders Bros. Radio Station*, 309 U.S. 470, 476, 477 S., 642, 60 S.Ct. 693, 698, 1037, we held that a rival station which would suffer economic injury by the of a license grant [--by grant of the **application** therefore--] to another station had standing to appeal under 402(b)(2) of the Act. In *Federal Communications Commission v. National Broadcasting Co.*, 319 U.S. 239, 63 S.Ct. 1035, [3] we reached the same conclusion where an **application** had been granted which would create such interference on the channel given an existing licensee as in effect to modify the earlier license. Petitioner is at least as adversely affected by the action of the Commission in this case as were the protestants in those cases. [4] While the statutory right of petitioner to a hearing on its **application** has in form been preserved, it has as a practical matter been substantially nullified by the grant of the Fetzer application.

The evidentiary hearing due-process requirements of 309(d)-(e), which reflect the earlier holdings in *Ashbacker*, and the *Sanders*, and *National* cases cited in *Ashbacker*.

In this case, 309(e) requires a hearing because there are “substantial and material questions of fact”: within the meaning of that subsection. Further, a hearing is essential for the public interest determination purpose involved in 309(a), and for the purpose of the rights of the parties involved.

Beaumont Branch of NAACP v. FCC, 854 F.2d 501, 507 (D.C. Cir. 1988) (“Beaumont”).

Beaumont states (emphasis and items in brackets added):

We have ... held that a petition to deny must fulfill three conditions before the Commission will be required to hold a hearing. See *California Public Broadcasting Forum v. FCC*, 243 U.S. App. D.C. 213, 752 F.2d 670, 674 (D.C. Cir. 1985) (“CPBF”). [1] First, the petition must show the necessary specificity and support; mere conclusory allegations are not sufficient. See *id.*; *Stone v. FCC*, 151 U.S. App. D.C. 145, 466 F.2d 316, 322 (D.C. Cir. 1972). [2] Second, the dispute must be a factual one, rather than a disagreement over the proper interpretation to be given to agreed upon facts. See *CPBF*, 752 F.2d at 674. [3] Finally, even if the facts are in dispute, a hearing is required only if the issue is material and substantial. See *id.* [4] The existence of these factors is judged not merely based on the allegations of the petition, but also taking into account all the evidence before the Commission, including affidavits filed by the licensee. See *Citizens [\*\*18] for Jazz on WRVR, Inc. v. FCC*, 249 U.S. App. D.C. 342, 775 F.2d 392, 395 (D.C. Cir. 1985).

... [T]he Commission's discretion in this area is not absolute. We have noted previously that we will not “hesitate to intervene where the agency decision appears unreasonable or bears inadequate relation to the facts on which it is purportedly based. *CPBF*, 752 F.2d at 675.

The Petition meets the conditions of Beaumont (as noted above, this Petition for Reconsideration is Petitioners first opportunity to petition the Application since it was approved under immediate approval procedures and as such, per Section 1.948, is to be petition under Section 1.106 initially). Moreover, the standard in Chevron does not apply here. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837(1984) (“Chevron”). Chevron set forth the legal analysis for determining whether to grant deference to a government agency's interpretation of its own statutory mandate. *Chevron* is the Court's clearest articulation of the doctrine of "administrative deference," to the point that the Court itself has used the phrase "*Chevron* deference" in more recent cases. Petitioners cite this (i) since as shown above the central, threshold matters dealing with construction and termination issues of the PSI AMTS licenses and related character and fitness issues, are factual disputes not interpretations by the FCC of its rules (in fact auto-termination occurs without specific Commission action), and (ii) since the NY Order Proceeding is tainted and fatally defective due to a clear pattern of demonstrated, sustained FCC staff evasive and unlawful decisions on AMTS matters that have allowed and supported and support to this day AMTS spectrum warehousing and fraudulent licensing by PSI and that prejudice and damage Petitioners and their affiliates. Chevron does not apply in such cases, rather, the court looks at the case on appeal without Chevron deference.

#### 8. Burden of the Proof

Per 47 USC 309(d) and (e), the burden of the proof is on PSI to demonstrate they timely built and maintained their AMTS stations meeting the coverage and continuity of service requirements of Section 80.475(a) at their construction deadlines in order to avoid automatic termination without specific Commission action of those licenses and that it did report and pay all fees associated with its CMRS AMTS operations outside of and inside of California for over 14 years. However, PSI has not met this burden of proof since it had no evidence and continues

to refuse to provide any to Petitioners. Thus, Petitioners engineering study at Exhibit 1 is actually liberal in its technical parameters, which means PSI's actual operating parameters for its AMTS stations would result in even smaller contours and even larger, substantial gaps.

At minimum, given the facts and PSI's history already before the FCC as discussed above, the FCC cannot rely on PSI's representations that it has actually constructed the Licenses and is providing service, but should conduct an audit or investigation of the Licenses to determine what, if anything, was built and whether there is anything legitimate to assign, not considering the facts provided herein requiring PSI's disqualification as a Commission licensee.

#### 9. Recusal of Mr. Scot Stone

For the reasons given in the NY Order Proceeding by ENL, SSF and Havens, Mr. Scot Stone, if involved in this proceeding, must recuse himself, or be recused, from any decision on the instant matter. (Petitioners respect all FCC staff and recognize their important work, work load and changing Commission environment, but based on the past record, in some cases find such a position on recusal valid.)

#### 10. Bob Cooper Controlling Interest in PSI, Touch Tel

As Petitioners have argued, with sufficient evidence shown, in the NY Order Proceeding and in other proceedings before the FCC, Bob Cooper is a controlling interest of PSI. Indeed, all assertions by PSI of any real action under its licenses is by Touch Tel which, under California records (of this Touch Tel legal entity, domiciled in California) is 100% owned by Mr. Cooper. Only Mr. Cooper by his 100% owned company reported having any knowledge of and action involving the generally alleged construction of the PSI old One World Trade Center station site, in response to the requirement by the FCC to report the details, and for its WHG545 Haleakala station. (No details were given, but only Mr. Cooper via his company even made a vague suggestion of construction, with no proof, and no specificity as to coordinates location on the huge roof, transmitter frequencies, antenna system, etc.). Mr. Cooper is known in FCC and other



public records as active in wireless for decades, including as licensee of 800 MHz channels assigned to Nextel, then on the Board of Nextel. He is known in the industry (which can be proven in a hearing under 47 USC §309(d)) as the person that controls PSI, orders and handles its equipment and business, etc. Bob Cooper also informed Mr. Havens that he was going to sell his AMTS to a big company that was negotiating the purchase of the Fred Daniels/Regionet licenses at that time. And Fred Daniels in a meeting with Havens said that he had an option to purchase the PSI AMTS licenses from Bob Cooper. Also, in a trademark dispute decision from a April 7, 1998 hearing involving Mr. Cooper's company, Touch Tel Inc., (see U.S. Department of Commerce Patent and Trademark Office, Trademark Trial and Appeal Board, Touch Tel Corporation v. AirTouch Communications, Opposition Nos. 97,328 and 99,129, to applications Serial Nos. 74/487,071 and 74/478,131, filed on February 7 and January 10, 1994, respectively—see <http://www.uspto.gov/web/offices/com/sol/foia/ttab/2dissues/1999/97328.pdf> at pages 7-8) the US Department of Commerce Patent and Trademark Office wrote [underlining added for emphasis]:

According to Mr. Robert Cooper, opposer's president, opposer is a communication service provider which provides paging services (since 1988) to businesses as well as to individuals....In addition, opposer renders site rental business services, involving the providing of radio communications and video communications transmission facilities to businesses and paging companies; and commercial mobile radio services (CMRS) or two-way marine telephone communications for fishing and work boats. The latter service is of recent vintage for opposer.

At the time of this decision, Touch Tel did not hold any licenses for providing CMRS or “two-way marine telephone communications for fishing and work boats”, only PSI did. Yet, Mr. Cooper told the US Department of Commerce that it was his company Touch Tel rendering such service. The date of the decision was at the time PSI was already licensed for and obtaining additional AMTS spectrum. This is additional evidence that Mr. Cooper controls and runs PSI. He is also in public records as the spouse of Susan Cooper who, under FCC rules, shares equally

the control with him (unless she proves by court order that she is separate, and when challenged as noted in this section above, she had no response). The importance of disclosure of a co-control spouse is fundamental under the Communications Act, FCC rules, and all licensing matters, and in AMTS is specifically noted in the finding of the wife and husband co-controllers of MCLM, after (as with PSI) only the wife was reported as having full control. Clearly, this alone calls for a fact-finding hearing. When brought up before, PSI counsel and PSI could have, but did not, deny this spousal relation, or the controlling role of Touch-Tel-Mr. Cooper, and other matters noted above. That effectively admitted to these facts, and these facts fully disqualify PSI as licensee and call for sanctions against it, the co-controllers, and PSI counsel who perpetuate this concealment fraud.

#### 11. Potential Crystal Laundering

See page 1, second paragraph, above.

#### 12. Conclusion

For the reasons given herein, the relief stated on page 1 and further described above should be granted. This includes but is not limited to: (1) rescinding consent to the Application, (2) dismissal of the Application, (3) a hearing held under Section 309 (d) and (e), (4) a proceeding for revocation of the Licenses, and PSI's other FCC licenses (on cancellation or revocation basis), including for lack of character and fitness, ongoing and deliberate rule violations, and anticompetitive (and antitrust-violation) activity, (5) disqualification of PSI as a Commission licensee, and (6) investigation of spectrum laundering by Crystal.

Respectfully submitted, November 13, 2009,

*/s/ Warren Havens*

*[Submitted Electronically. Signature on File]*

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Warren C. Havens, President of each Petitioner  
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Ph: 510-841-2220. Fx: 510-841-2226

**Exhibit 1:**

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The following maps depict the 38 dBu service contours of the PSI Pacific Coast, Atlantic Coast and two of the Great Lakes AMTS licenses. They were produced by Peter Moncure, head of RadioSoft, using RadioSoft's Comstudy version 2.2 software and the technical parameters as described below for each station. As can be seen from these maps, the PSI AMTS licenses never met the coverage and continuity of service requirements of Section 80.475(a) in effect at the time and automatically terminated without specific Commission action at their construction deadlines. The blue station service contours on the maps are for the stations that were originally applied for and licensed and allegedly constructed for the Pacific Coast, Atlantic Coast and Great Lakes (there were 3 PSI-defined substantial navigational waterways in the Great Lakes, but PSI admitted to not constructing one of them in the 2004 FCC AMTS "audits". The red service contours are for the stations that were applied for and licensed and allegedly constructed after the construction deadline of the stations with the blue service contours. Thus, the red service contour stations automatically terminated without specific Commission action since there were no previous licenses under which they could be added since the original licenses had automatically terminated for failure to meet the requirements of Section 80.475(a). Also, even if viewed by themselves the stations with the red service contours automatically terminated because they were single-site stations that did not meet the requirements of Section 80.475(a).

Technical parameters used to produce below service contour studies maps:

Notes:

The technical parameters listed for the stations in ULS were used, except for the WQA216 (“WTC Station”) which used the parameters from the NY Order Proceeding.

Unless specified in ULS, an 8 dB gain omni antenna and 8.5 dB combiner and filter loss<sup>23</sup> were assumed for all stations, except that for the WTC Station the parameters from the NY Order Proceeding were used, except that on the 25W TPO Atlantic Coast map 25W TPO was also used for the WTC Station since that was what was specified in the original PSI station application (using a Neutec Communications transmitter).

The below charts for each license area, Pacific Coast, Atlantic Coast and Great Lakes two licensed areas, contain the technical parameters used to produce the maps.

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<sup>23</sup> This amount of combiner and filter loss was what the FCC assumed in the NY Order Proceeding—Petitioners are appealing the Order in that proceeding but utilize that amount of loss here per station to show that even using the FCC’s assumed loss PSI did not meet the coverage and continuity of service.

## Atlantic Coast Maps: Station Technical Parameters Used

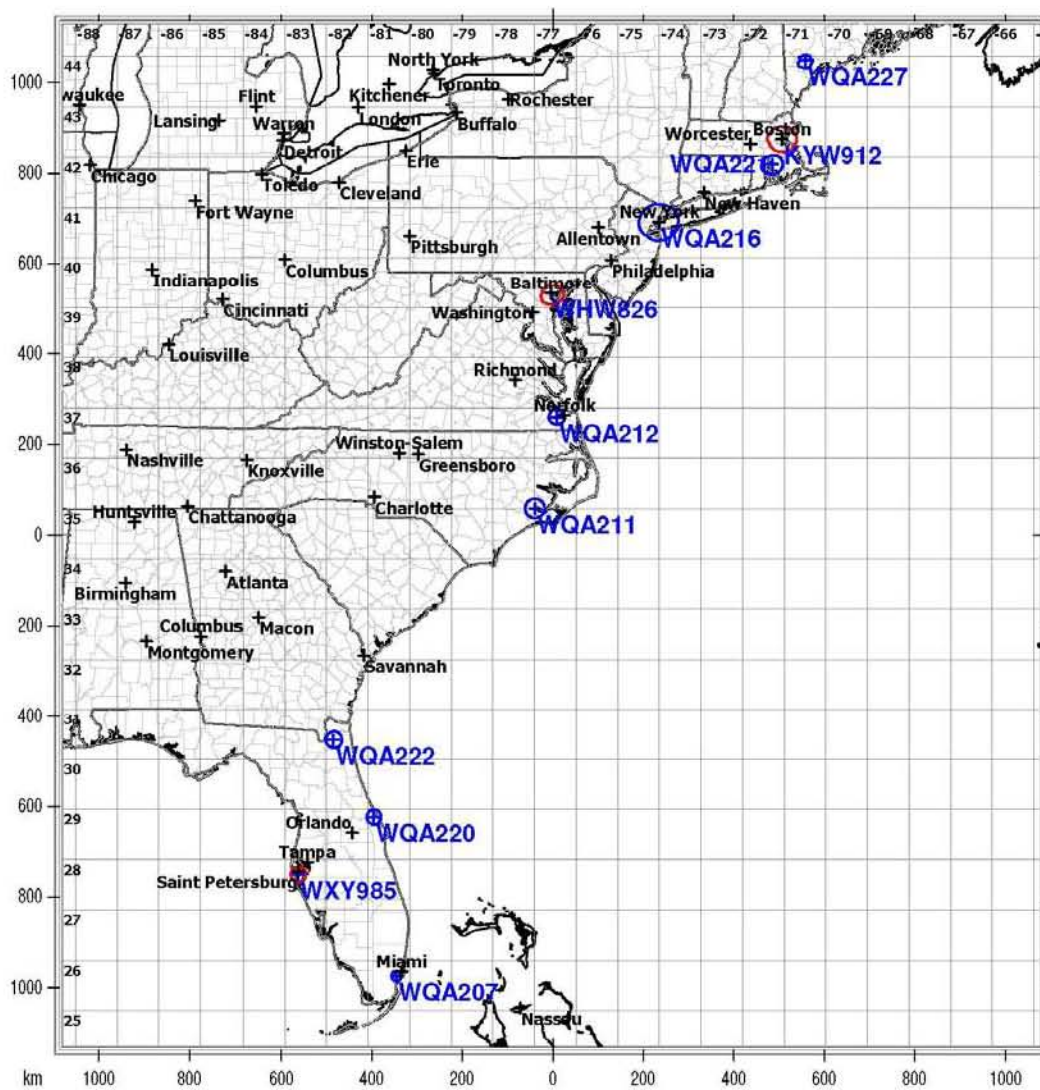
### PSI AMTS-Atlantic-50W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx_Power	Losses
KYW912	42-21-31.0 N	71-03-29.2 W	189	12	201	44.6	8	50	8.5
WHW826	39-17-15.4 N	76-36-54.9 W	164	4	168	44.6	8	50	8.5
WQA207	25-41-16.4 N	80-19-02.2 W	18	2	20	44.6	8	50	8.5
WQA211	35-00-02.6 N	76-59-30.8 W	96	7	103	44.6	8	50	8.5
WQA212	36-49-00.5 N	76-28-03.8 W	61	6	67	44.6	8	50	8.5
WQA216	40-42-43.4 N	74-00-47.5 W	419.41	5.5	424.91	32	0	50	1.44
WQA220	28-50-53.0 N	80-51-46.2 W	61	1	62	44.6	8	50	8.5
WQA221	41-51-54.4 N	71-17-13.2 W	61	64	125	44.6	8	50	8.5
WQA222	30-22-45.9 N	81-49-59.4 W	61	27	88	44.6	8	50	8.5
WQA227	43-55-28.3 N	70-29-26.2 W	61	91	152	44.6	8	50	8.5
WXY985	27-42-10.1 N	82-40-41.4 W	66	1	67	44.6	8	50	8.5

### PSI AMTS-Atlantic-25W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx Power	Losses
KYW912	42-21-31.0 N	71-03-29.2 W	189	12	201	22.3	8	25	8.5
WHW826	39-17-15.4 N	76-36-54.9 W	164	4	168	22.3	8	25	8.5
WQA207	25-41-16.4 N	80-19-02.2 W	18	2	20	22.3	8	25	8.5
WQA211	35-00-02.6 N	76-59-30.8 W	96	7	103	22.3	8	25	8.5
WQA212	36-49-00.5 N	76-28-03.8 W	61	6	67	22.3	8	25	8.5
WQA216	40-42-43.4 N	74-00-47.5 W	419.41	5.5	424.91	16	0	25	1.44
WQA220	28-50-53.0 N	80-51-46.2 W	61	1	62	22.3	8	25	8.5
WQA221	41-51-54.4 N	71-17-13.2 W	61	64	125	22.3	8	25	8.5
WQA222	30-22-45.9 N	81-49-59.4 W	61	27	88	22.3	8	25	8.5
WQA227	43-55-28.3 N	70-29-26.2 W	61	91	152	22.3	8	25	8.5
WXY985	27-42-10.1 N	82-40-41.4 W	66	1	67	22.3	8	25	8.5

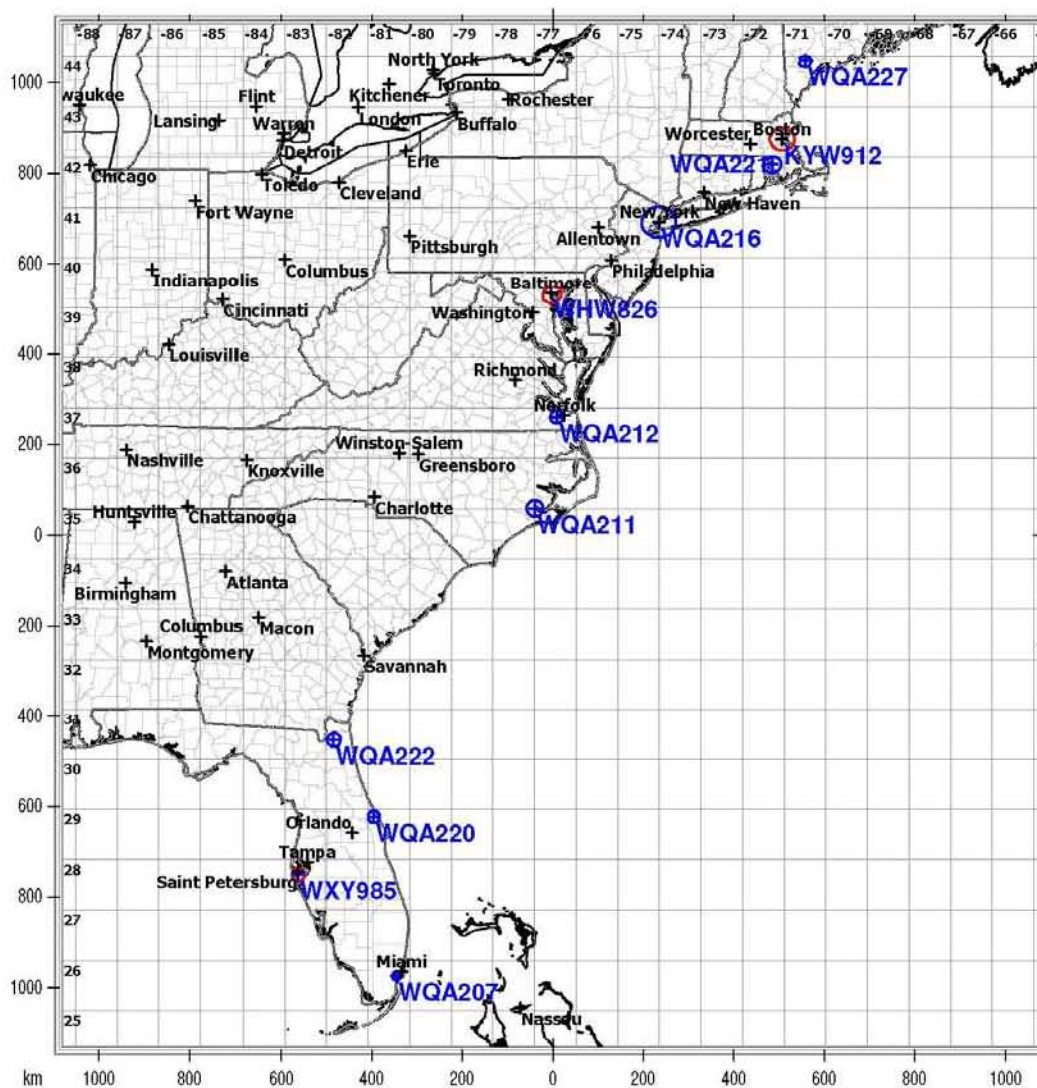
PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed



38 dBμ Contours Calculated using §80.385(b)(1)

Map Scale: 1:12766284 1 cm = 127.66 km VIH Size: 2259.04 x 2161.15 km

PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed



38 dBμ Contours Calculated using §80.385(b)(1), 25 Watts TPO

Map Scale: 1:12766284 1 cm = 127.66 km Vih Size: 2259.36 x 2161.46 km

## Pacific Coast Maps: Station Technical Parameters Used

### PSI AMTS-Pacific-50W

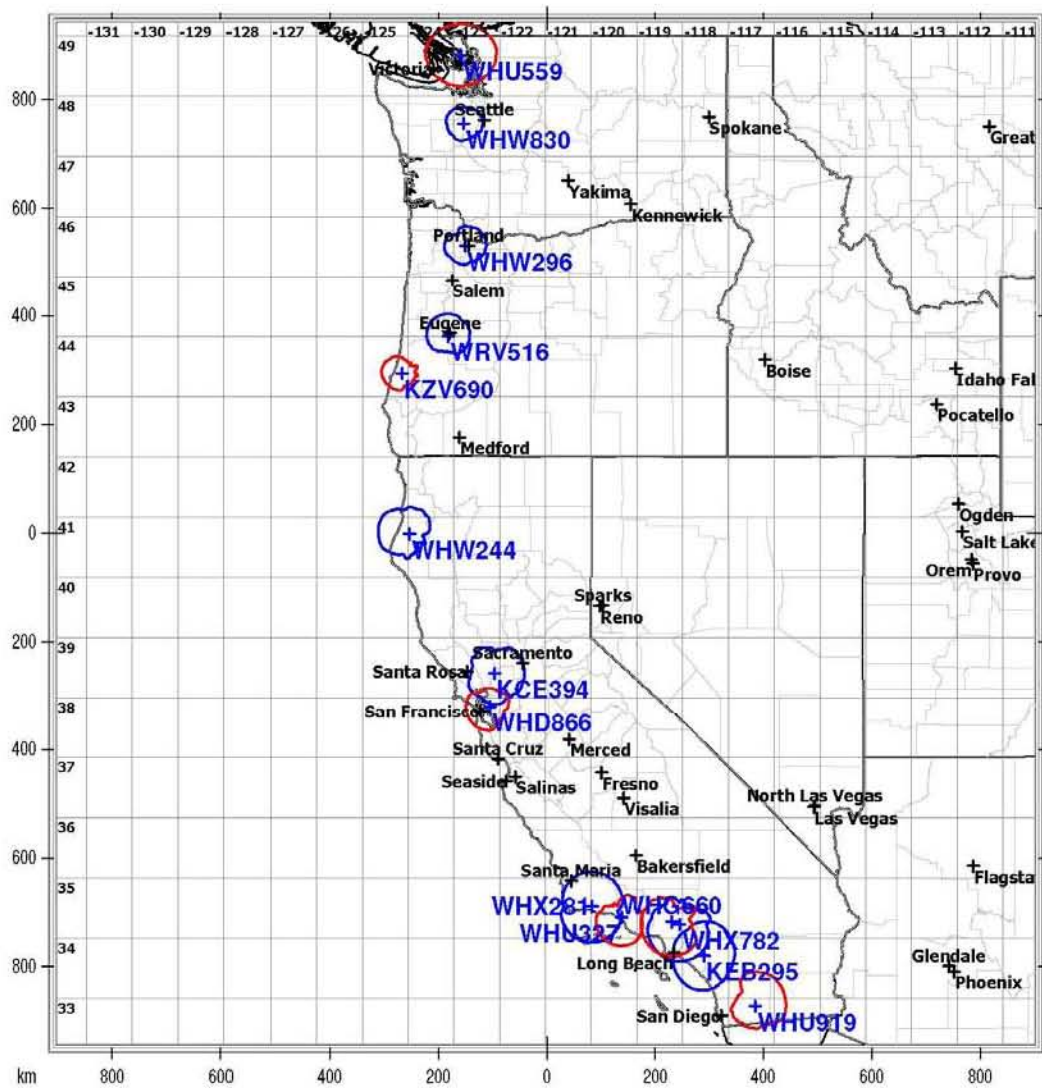
Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx Power	Losses
KCE394	38-24-31.7 N	122-06-37.9 W	55	829	884	44.6	8	50	8.5
KEB295	33-42-39.1 N	117-32-04.2 W	21	1697	1718	44.6	8	50	8.5
KZV690	43-23-25.4 N	124-07-50.4 W	60	262	322	44.6	8	50	8.5
WHD866	37-51-11.7 N	122-12-33.9 W	43	444	487	44.6	8	50	8.5
WHG660	34-16-09.0 N	118-14-01.3 W	15	1545	1560	44.6	8	50	8.5
WHU327	34-20-55.0 N	119-20-00.4 W	51	597	648	44.6	8	50	8.5
WHU559	48-40-44.4 N	122-50-35.7 W	122	642	764	44.6	8	50	8.5
WHU919	32-52-39.0 N	116-24-54.0 W	15	1879	1894	44.6	8	50	8.5
WHW244	40-43-36.5 N	123-58-29.2 W	9	808	817	56.1	9	50	8.5
WHW296	45-31-27.4 N	122-44-52.4 W	18	317	335	56.1	9	50	8.5
WHW830	47-32-56.3 N	122-47-06.5 W	30	527	557	7.1	0	50	8.5
WHX281	34-31-36.0 N	119-58-42.5 W	27	1298	1325	56.1	9	50	8.5
WHX782	34-13-33.0 N	118-04-00.2 W	28	1721	1749	56.1	9	50	8.5
WRV516	44-00-06.4 N	123-06-57.3 W	94	396	490	56.1	9	50	8.5

### PSI AMTS-Pacific-25W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx Power	Losses
KCE394	38-24-31.7 N	122-06-37.9 W	55	829	884	22.3	8	25	8.5
KEB295	33-42-39.1 N	117-32-04.2 W	21	1697	1718	22.3	8	25	8.5
KZV690	43-23-25.4 N	124-07-50.4 W	60	262	322	22.3	8	25	8.5
WHD866	37-51-11.7 N	122-12-33.9 W	43	444	487	22.3	8	25	8.5
WHG660	34-16-09.0 N	118-14-01.3 W	15	1545	1560	22.3	8	25	8.5
WHU327	34-20-55.0 N	119-20-00.4 W	51	597	648	22.3	8	25	8.5
WHU559	48-40-44.4 N	122-50-35.7 W	122	642	764	22.3	8	25	8.5
WHU919	32-52-39.0 N	116-24-54.0 W	15	1879	1894	22.3	8	25	8.5
WHW244	40-43-36.5 N	123-58-29.2 W	9	808	817	28.05	9	25	8.5
WHW296	45-31-27.4 N	122-44-52.4 W	18	317	335	28.05	9	25	8.5
WHW830	47-32-56.3 N	122-47-06.5 W	30	527	557	3.55	0	25	8.5
WHX281	34-31-36.0 N	119-58-42.5 W	27	1298	1325	28.05	9	25	8.5
WHX782	34-13-33.0 N	118-04-00.2 W	28	1721	1749	28.05	9	25	8.5
WRV516	44-00-06.4 N	123-06-57.3 W	94	396	490	28.05	9	25	8.5

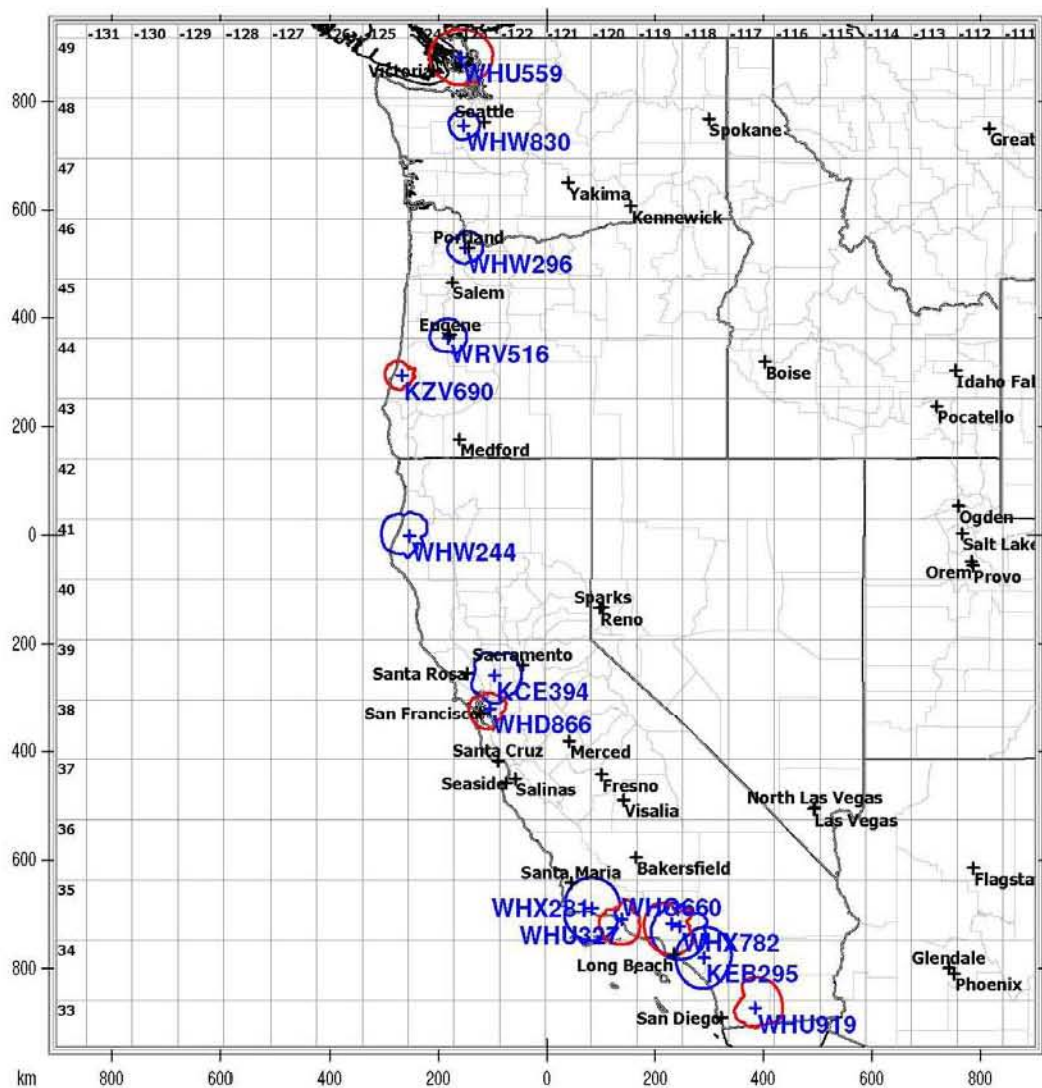


PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed



38 dBμ Contours Calculated using §80.385(b)(1), 50 watts TPO

PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed



38 dBμ Contours Calculated using §80.385(b)(1), 25 watts TPO

## Great Lakes Two License Areas Maps: Station Technical Parameters Used

### PSI AMTS-GL-KPB347-50W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx_Power	Losses
KBP347-12	43-23-04.0 N	86-19-30.2 W	132	195	327	44.6	8	50	8.5
KBP347-13	42-59-20.1 N	82-29-09.7 W	91	189	280	44.6	8	50	8.5
KBP347-14	42-19-45.1 N	83-02-24.7 W	222	177	399	44.6	8	50	8.5
KBP347-7	41-53-56.1 N	87-37-23.2 W	444	181	625	44.6	8	50	8.5
KBP347-8	43-23-49.0 N	87-54-53.3 W	64	250	314	44.6	8	50	8.5
KBP347-9	44-54-21.0 N	87-22-15.4 W	61	259	320	44.6	8	50	8.5

### PSI AMTS-GL-KPB347-25W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx_Power	Losses
KBP347-12	43-23-04.0 N	86-19-30.2 W	132	195	327	22.3	8	25	8.5
KBP347-13	42-59-20.1 N	82-29-09.7 W	91	189	280	22.3	8	25	8.5
KBP347-14	42-19-45.1 N	83-02-24.7 W	222	177	399	22.3	8	25	8.5
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KBP347-8	43-23-49.0 N	87-54-53.3 W	64	250	314	22.3	8	25	8.5
KBP347-9	44-54-21.0 N	87-22-15.4 W	61	259	320	22.3	8	25	8.5

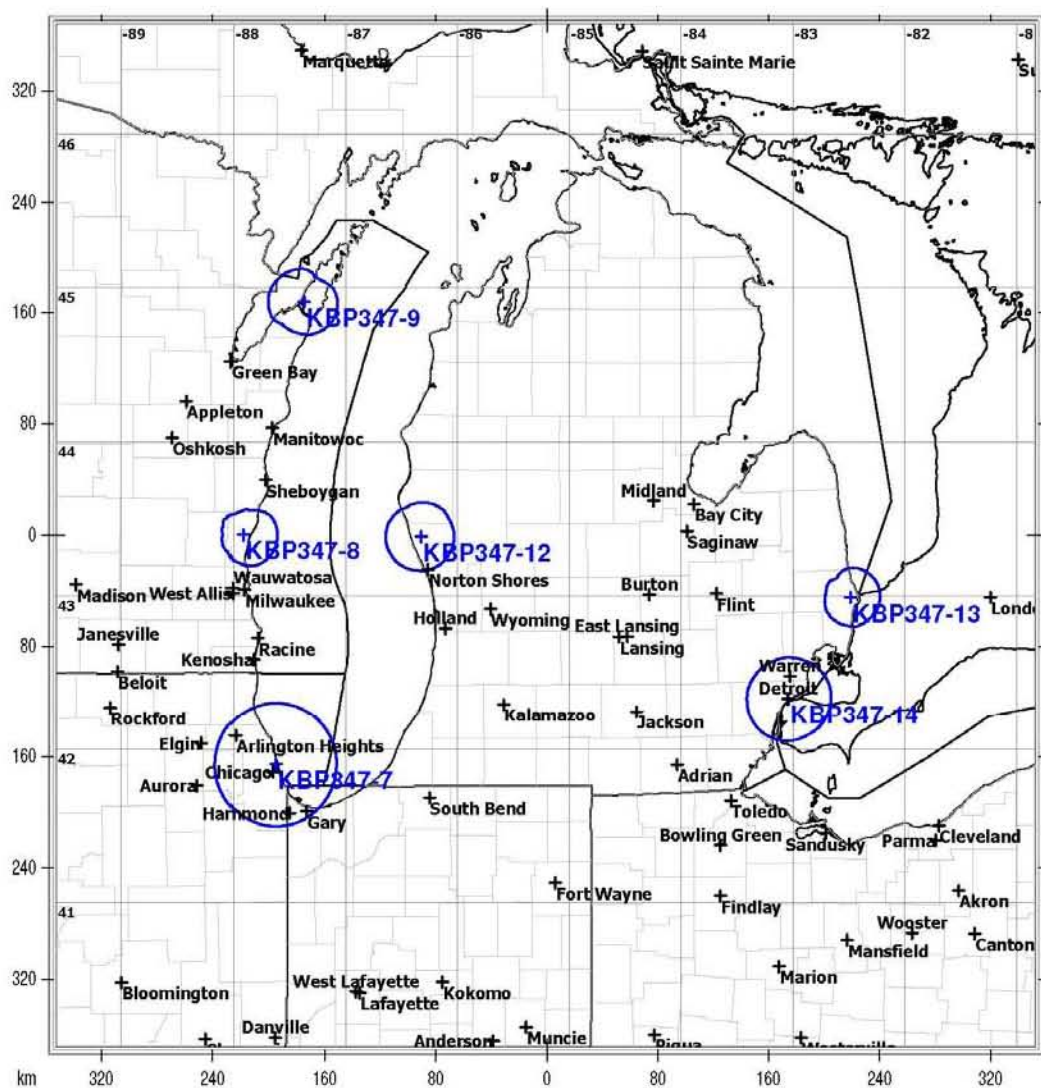
### PSI AMTS-GL-KSC779-50W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx_Power	Losses
KSC779-5	42-53-10.2 N	78-52-24.1 W	155	183	338	44.6	8	50	8.5
KSC779-6	42-04-03.2 N	80-00-03.2 W	88	427	515	44.6	8	50	8.5
KSC779-7	41-29-34.2 N	81-46-43.5 W	104	195	299	44.6	8	50	8.5
KSC779-8	41-40-19.2 N	83-25-06.8 W	152	178	330	44.6	8	50	8.5

### PSI AMTS-GL-KSC779-25W

Call Sign	Lat	Lon	AGL_m	GL_m	AMSL_m	ERP_w	Tx Antenna Gain	Tx_Power	Losses
KSC779-5	42-53-10.2 N	78-52-24.1 W	155	183	338	22.3	8	25	8.5
KSC779-6	42-04-03.2 N	80-00-03.2 W	88	427	515	22.3	8	25	8.5
KSC779-7	41-29-34.2 N	81-46-43.5 W	104	195	299	22.3	8	25	8.5
KSC779-8	41-40-19.2 N	83-25-06.8 W	152	178	330	22.3	8	25	8.5

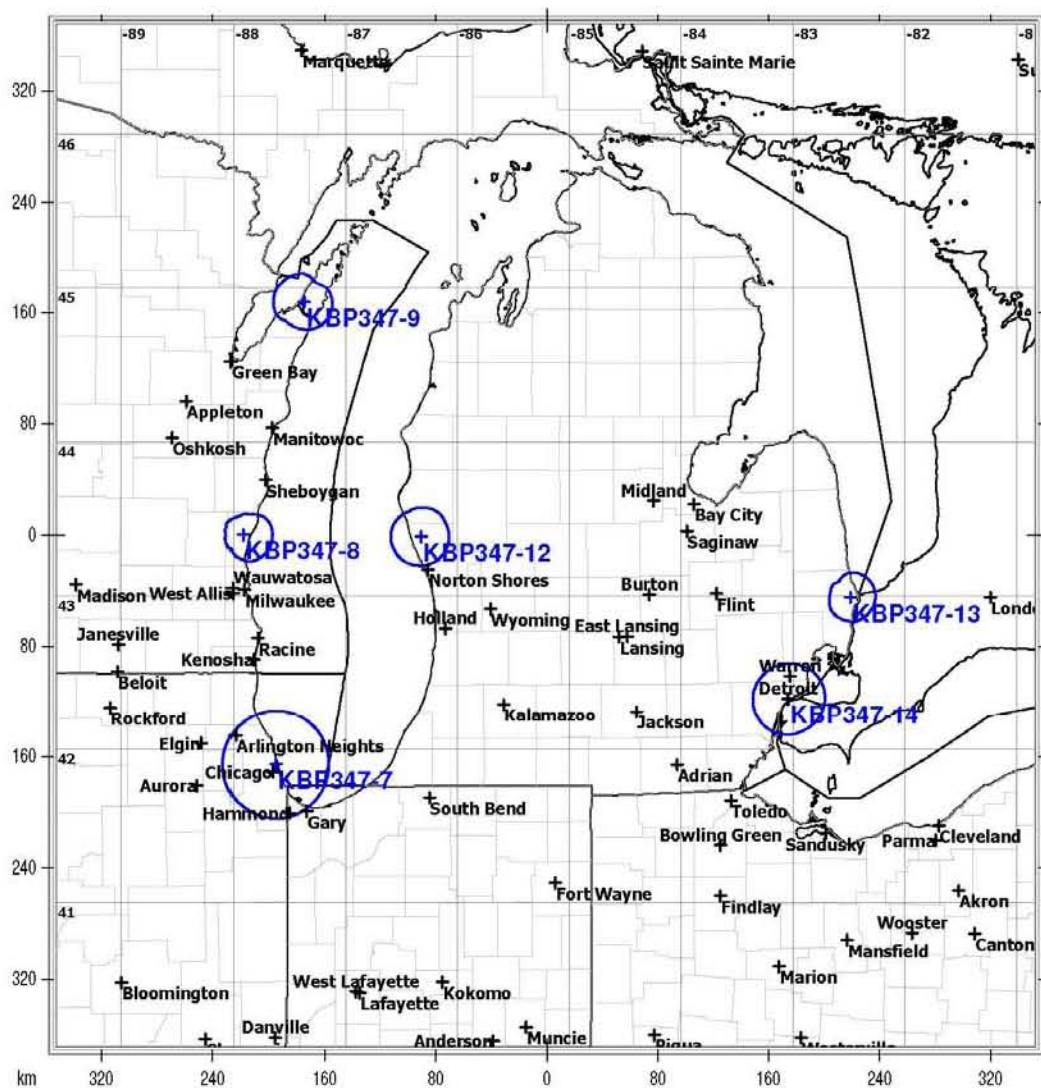
PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed



38 dBμ Contours Calculated using §80.385(b)(1), 50 watts TPO

Map Scale: 1:4163846 1 cm = 41.64 km VIH Size: 736.91 x 704.98 km

PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed

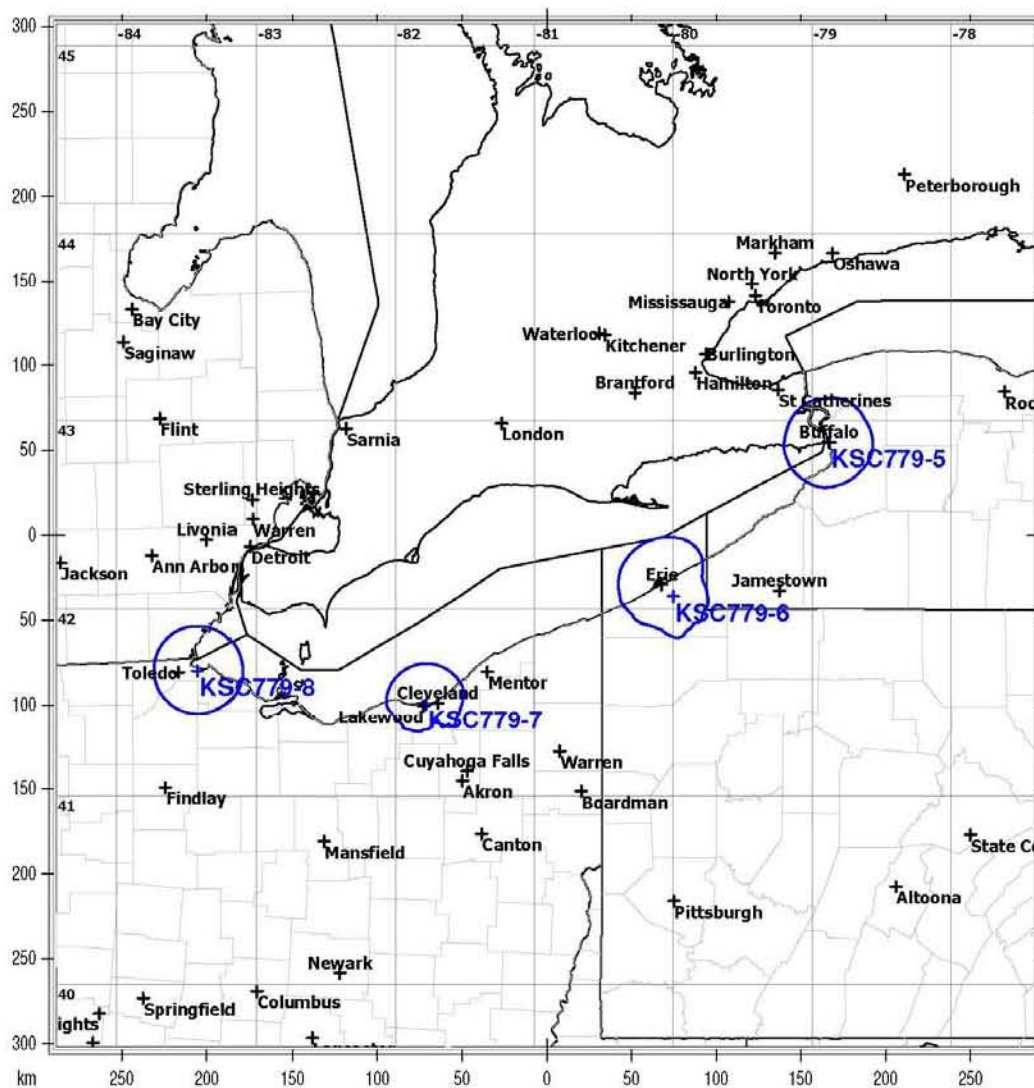


38 dBμ Contours Calculated using §80.385(b)(1), 25 watts TPO

Map Scale: 1:4163846 1 cm = 41.64 km VIH Size: 736.81 x 704.88 km



## PSI AMTS Service, 8 dB Antenna Gain and 8.5 dB Combiner Losses Assumed



38 dBμ Contours Calculated using §80.385(b)(1), 50 watts TPO

Map Scale: 1:3409128 1 cm = 34.09 km VIH Size: 603.26 x 577.12 km

A map of the Great Lakes region of North America, showing the locations of four study sites: KSC779-5, KSC779-6, KSC779-7, and KSC779-8. The map includes a grid of latitude and longitude, with latitude ranging from 40 to 45 degrees North and longitude ranging from -84 to -78 degrees West. Major cities and locations are marked with black dots and labeled, including Toronto, Detroit, Cleveland, Pittsburgh, and many others. The four study sites are highlighted with blue circles and labeled in blue text: KSC779-5 is located near Buffalo, KSC779-6 is located near Erie, KSC779-7 is located near Cleveland, and KSC779-8 is located near Toledo. The map also shows the Great Lakes and the surrounding landmasses.

Map Scale: 1:3409128    1 cm = 34.09 km    VIH Size: 603.26 x 577.12 km

Exhibit 2:

Paging Systems, Inc.'s Form 499-A: New York, New Jersey and Connecticut are not Listed

Paging Systems, Inc. ("PSI") holds and alleges to have operated AMTS licensed station throughout the U.S. In fact, the PSI Form 499-A only listed California as the sole jurisdiction where PSI is providing telecommunications services.

Attached below are the following:

- (1) PSI April 1, 2008 Form 499-A from FCC online Form 499-A database (see <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm> )
- (2) PSI April 1, 2004 Form 499-A from FCC online database (printed 11/1/07)

Note: Paging Systems, Inc.'s Form 499-A below, with a "Registration Current as of" date of April 1, 2004 was printed from the FCC's online Form 499-A database on November 1, 2007 (the FCC's Form 499-A online database is available at <http://fjallfoss.fcc.gov/cgb/form499/499a.cfm>). The FCC's online database displays the most current Form 499-A on file for an entity. Therefore, at the end of 2007, Paging Systems, Inc.'s most current, filed Form 499-A was from 2004, even though the Form 499-A is required to be filed each year.





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## FCC Form 499-A Telecommunications Reporting Worksheet

## DETAILED INFORMATION

## Filer Identification Information:

499 Filer ID Number: **812203**  
 Registration Current as of: **4/1/2008**  
 Legal Name of Reporting Entity: **Paging Systems, Inc.**  
 Doing Business As: **Paging Systems, Inc.**  
 Principal Communications Type: **Paging & Messaging**  
 Universal Service Fund Contributor: **No**  
 (Contact USAC at 888-641-8722 if this is not correct.)  
 Holding Company:  
 Registration Number (CORESID): **0001204600, 0001546423**  
 Management Company:  
 Headquarters Address: **P.O. Box 4249**  
     City: **Burlingame**  
     State: **CA**  
     ZIP Code: **940114249**  
 Customer Inquiries Address: **P.O. Box 4249**  
     City: **Burlingame**  
     State: **CA**  
     ZIP Code: **940114249**  
 Customer Inquiries Telephone: **650-697-1000**  
 Other Trade Names:

 Agent for Service of Process:  
 Local/Alternate Agent for Service  
 of Process:

    Telephone:  
     Extension:  
     Fax:  
     E-mail:  
 Business Address of Agent for  
 Mail or Hand Service of Documents:  
     City:  
     State:  
     ZIP Code:

D.C. Agent for Service of Process: **Audrey P. Rasmussen**  
     Telephone: **202-973-1200**  
     Extension:  
     Fax: **202-973-1212**  
     E-Mail: **[arasmussen@hallestill.com](mailto:arasmussen@hallestill.com)**  
 Business Address of D.C. Agent for  
 Mail or Hand Service of Documents: **1120 20th St. NW**  
     **North Building**  
     **Suite 700**  
     City: **Washington**  
     State: **DC**  
     ZIP Code: **200363406**

## FCC Registration Information:

Chief Executive Officer: **S. Cooper**  
     Business Address: **P.O. Box 4249**

City: **Burlingame**  
State: **CA**  
ZIP Code: **940114249**

Chairman or Other Senior Officer:  
Business Address:  
City:  
State:  
ZIP Code:

President or Other Senior Officer:  
Business Address:  
City:  
State:  
ZIP Code:

Jurisdictions in Which the Filing Entity Provides Telecommunications Services:

**California**

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Washington, DC 20554    TTY: 1-888-TELL-FCC (1-888-835-5322)  
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## FCC Form 499-A Telecommunications Reporting Worksheet

### DETAILED INFORMATION

**Filer Identification Information:**

499 Filer ID Number: **812203**  
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 Principal Communications Type: **Paging & Messaging**  
 Universal Service Fund Contributor: **No**  
 (Contact USAC at 888-641-8722 if this is not correct.)  
 Holding Company:  
 Registration Number (CORESID): **0001-2046-00, 0001-5464-23**  
 Management Company:  
 Headquarters Address: **P.O. Box 4249**  
     City: **Burlingame**  
     State: **CA**  
     ZIP Code: **940114249**  
 Customer Inquiries Address: **P.O. Box 4249**  
     City: **Burlingame**  
     State: **CA**  
     ZIP Code: **940114249**  
 Customer Inquiries Telephone: **650-697-1000**  
 Other Trade Names:

**Agent for Service of Process:**  
**Local/Alternate Agent for Service of Process:**

    Telephone:  
     Extension:  
     Fax:  
     E-mail:  
 Business Address of Agent for  
 Mail or Hand Service of Documents:  
     City:  
     State:  
     ZIP Code:

D.C. Agent for Service of Process: **Audrey P. Rasmussen**  
     Telephone: **202-973-1200**  
     Extension:  
     Fax: **202-973-1212**  
     E-Mail: [arasmussen@hallestill.com](mailto:arasmussen@hallestill.com)  
 Business Address of D.C. Agent for  
 Mail or Hand Service of Documents: **1120 20th St. NW**  
     North Building  
     Suite 700  
     City: **Washington**  
     State: **DC**  
     ZIP Code: **200363406**

**FCC Registration Information:**

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State: **CA**  
ZIP Code: **940114249**

## Chairman or Other Senior Officer:

Business Address:  
City:  
State:  
ZIP Code:

## President or Other Senior Officer:

Business Address:  
City:  
State:  
ZIP Code:

## Jurisdictions in Which the Filing Entity Provides Telecommunications Services:

**California**

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445 12th Street SW  
Washington, DC 20554  
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TTY: 1-888-TELL-FCC (1-888-835-5322)  
Fax: 1-866-418-0232  
E-mail: [fccinfo@fcc.gov](mailto:fccinfo@fcc.gov)

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Exhibit 3: Pages from the PSI Station Application for WQA216 including the cover letter and an explanation of proposed service. PSI stated that it was applying for AMTS stations for the entire East Coast and that it would meet continuity of coverage by adding stations, which it never did, to meet the requirements of Section 80.475(a). Its applications were granted on this basis since AMTS could not be single-site (it was not the VHF Public Coast Service). The PSI AMTS stations automatically terminated without specific Commission action for failure to meet those requirements.

O'CONNOR & HANNAN

ATTORNEYS AT LAW

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1919 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20006-3483  
(202) 887-1400  
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AUDREY R. RASMUSSEN

MINNEAPOLIS OFFICE  
3000 IDS CENTER  
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FAX (612) 323-1898  
MADRID OFFICE  
LA VENEZIA 10, 2<sup>a</sup>  
28013 MADRID, SPAIN  
(91) 341 878-0000 & 357-2851  
FAX (91) 341 377-0750

July 30, 1993

Federal Communications Commission  
Marine Coast Service  
P.O. 358265  
Pittsburgh, PA 15251-5265

RE: Paging Systems, Inc., Application for  
Automated Maritime Telecommunications  
Systems (AMTS) - Newark, New Jersey

Attn: Mr. Marcus D. Stevens, Chief  
Special Services Branch  
Private Radio Bureau

Dear Mr. Stevens:

Transmitted herewith, on behalf of Paging Systems, Inc., is an application which is part of a proposed Automated Maritime Telecommunications System ("AMTS"). Paging Systems, Inc. is proposing ten sites from Portland, Maine through Miami and Tampa, Florida.

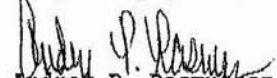
In this application, Paging Systems, Inc. seeks to assure the Commission that its sites have been carefully engineered to avoid interference. As discussed in the enclosed engineering statement, each site is documented and various parameters are calculated. At co-located sites, a proof is included which demonstrates that the protection depends essentially on the power ratio between the TV facility and the AMTS station. An analysis is performed for each AMTS station near the facility. For AMTS outside the Grade B or protected contour of the TV station, desired and undesired contours are plotted and a detailed interference analysis is included for each facility. Aside from initially engineering its system to avoid interference, Paging Systems, Inc. will work to eliminate any harmful interference caused by its operation to TV reception within a broadcast station's Grade B contour, in an expedited timeframe, after notification of any such interference in writing by the Commission.

Federal Communications Commission  
July 30, 1993  
Page 2

The proposed ten transmitter sites will form the "backbone" of the applicant's system. Additional transmitter and receiver locations will be added when the system becomes operational. Paging Systems, Inc. proposes to serve the entire East Coast.

Any questions concerning the enclosed material should be directed to this office.

Very truly yours,

  
Audrey P. Rasmussen

**Explanation of Proposed Operation  
and  
Statement of Public Interest**

Paging Systems, Inc. (the "Applicant") hereby applies for an Automated Maritime Telecommunications System ("AMTS") to serve the Port of New York, New York. References herein to the New York area should be understood as referring, more precisely, to the Newark, New Jersey site. The port of New York is one of the nation's most active ports. Accordingly, provision of new AMTS service to the New York maritime community will be in the public interest.

Paging Systems, Inc. is concurrently applying for nine other AMTS systems from Portland, Maine, through Miami and Tampa, Florida. These systems will be integrated with one another so that a vessel will be located automatically, regardless of which of the systems' service areas it is within.

The Applicant will use a satellite communications system to control its base stations and to locate automatically a vessel which is being called by a landline caller. Use of a satellite system for integrating Paging Systems, Inc.'s facilities will allow it to provide new automated maritime service in the shortest possible time at the lowest practical cost to subscribers. Use of the satellite will also expedite expansion of the Applicant's operations as it adds base stations to serve additional areas of the Atlantic Coast. Upon receiving a call from any point in the public switched telephone network directed to a subscriber vessel, the Applicant will use the satellite to determine automatically the location and availability of the vessel to accept a call. Upon determining the location of the subscriber vessel and finding that it is available to accept a call, the Applicant will automatically route the call to the vessel through the base station serving the vessel. The vessel will be able to dial automatically any point within the public switched telephone network while the vessel is within the service area of any of the Applicant's stations. The vessel will be able to place either a local call within the calling area of the base station with which it is operating or a long distance call to any place in the world.

All aspects of system operation, including locating a vessel, connecting a landline caller to the vessel, connecting a vessel to the public switched telephone network to allow the placing of a call, timing and ticketing will be fully automatic and transparent to the user.

Paging Systems, Inc. intends to place sufficient transmitters in service to establish an automated system within eight months of the date of license grant, with the number of



transmitters expected to be added explained in each application. The Applicant expects to construct and commence operation on a sufficient number of channels to establish automated service within eight months of the grant of its initial authorization. Consistent with the experience which can be obtained only by field operation, the Applicant expects to construct and commence operation on additional channels by the second anniversary of its license and to reach the maximum number of channels to be used by the third anniversary of its license grant. The Applicant will report permanent changes in the number of transmitters in service at each site.

The absence of practical experience in commercial use of the AMTS band along the Atlantic Coast makes it difficult for the Applicant either to project market demand with a high degree of reliability or to assess the potential for interference, particularly the potential for interference among certain systems.

As the Applicant expands its AMTS system, it may encounter propagation problems at any location, such as those which are well known in other frequency bands in Southern California and in the Gulf of Mexico. As the Commission knows, the propagation over water is subject to a phenomenon known in the Gulf as the "coast effect", in which radio waves from an offshore transmitter may divert wildly from a direct path as they approach the coast. Since little is known concerning offshore propagation in the AMTS band, little or nothing is known of the potential for coast effect to cause intrasystem interference, or to divert a vessel signal to a station other than the nearest.

To allow the Applicant to provide for immediate relief from propagation peculiarities, including any which may be seasonal, the Applicant requires authorization for a sufficient number of channels to allow it to reconfigure each base station dynamically.

In the more northerly locations, commercial maritime traffic is seasonal, with more channels likely to be needed in the warmer months than would be necessary during the dead of winter. Because coastal weather, as well as climate, is an important factor in the extent of maritime activity, the Applicant expects to experience fluctuations in demand which far exceed those experienced by other commercial communications systems, such as the cellular service. To allow the meeting of peak demands adequately, the Applicant will require substantially more channels to be available than would be indicated by review of an average of traffic over many months.

Paging Systems, Inc. requests use of AMTS Frequency Group B. The Commission is well aware of the spectrum efficiency which results from trunked operation and is also well aware that

spectrum efficiency increases exponentially with an increasing number of channels in the trunked group. The Applicant desires to operate with the greatest possible degree of spectrum efficiency. Accordingly, the Applicant believes that the entire Frequency Group will be required to meet public demand for its proposed AMTS maritime service. The Applicant will adjust the number of channels in service automatically as demand changes. Therefore, Paging Systems, Inc. requests assignment of Frequency Group B. In accord with Section 80.385(b) of the Commission's Rules, the Applicant also requests authorization to use the channels within Frequency Group B which are separated from the regularly allocated channels by 12.5 kHz.

Declaration

I, Warren C. Havens, hereby declare, under penalty of perjury, that the foregoing Petition for Reconsideration, including all Exhibits, was prepared pursuant to my direction and control and that all the factual statements and representations of which I have direct knowledge contained herein are true and correct.

/s/ [Submitted Electronically. Signature on File.]

---

Warren C. Havens

November 13, 2009

Certificate of Service

I, Warren Havens, certify that I have, on this 13<sup>th</sup> day of November 2009, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Petition for Reconsideration to the following:<sup>24</sup>

Paging Systems, Inc.

S. Cooper

ATTN Licensing

PO Box 4249

Burlingame, CA 94011-4249

*Above is Licensee and Contact listed on the Application*

Crystal SMR, Inc.

David A Hernandez

ATTN Licensing

1601 Neptune Drive

San Leandro, CA 94577

*Above is Licensee and Contact listed on the Application*

/s/ [Filed Electronically. Signature on File.]

---

Warren Havens

---

<sup>24</sup> The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.